IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.352 OF 2007
WITH
CIVIL APPLICATION NO.711 OF 2007

Shyam Arjun Kasakar & Anr. .. Appellants.
Vs.
Pradip Shamrao Patil & Anr. .. Respondents.

Mr.Sudhir Prabhu for the appellants.
Mr.A.S.Khandeparkar for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 1ST OCTOBER, 2007.

P.C.:

. Leave to amend. Amendment to be carried out within one week from today.

2. This second appeal is directed against concurrent judgments of the courts below by which a suit filed by the respondent-plaintiff for declaration in respect of his right of way through the property owned by defendant No.3 as easement of necessity and for mandatory injunction directing the appellants to remove kiosk from the way/track in dispute so also for perpetual injunction restraining the appellants from obstructing their right of the way, stands decreed.

3. Mr.Sudhir Prabhu, learned counsel for the

appellants submitted that the right of easement of necessity being co-extensive with the necessity as it existed when the easement was imposed, the plaintiffs in the present case, have failed to establish the same. He submitted that there is no pleading or a finding recorded by the courts below in respect of the width of the track as 8 ft. Moreover, he submitted, the evidence on record shows that when the Cadestral Surveyor was appointed as a Court Commissioner and when he had visited the suit property, the way in dispute was not in existence. Learned counsel therefore, submitted that both the courts below have committed an error of law in holding, without recording any reasons, that the plaintiff has proved his right of way to the extent of 8 ft. I perused the judgments of the courts below so also the other material placed before me for my consideration. It appears, apart from the fact that the suit way was clearly described in the plaint and the map annexed thereto also show the way in dispute, the courts below have taken into consideration the entire evidence placed on record and have concurrently held that the plaintiff has established the easement of necessity and the obstruction by the appellants in his enjoyment of the right of way. The right of way cannot be cut down by reducing the width of the passage. I find no reason to interfere with

the findings recorded by the courts below on the basis of evidence on record, holding that the width of the way was eight feet. Looking to the description of the property and the map annexed to the plaint and the other evidence on record it cannot be said that the plaintiffs had not claimed the right of way by easement of necessity to the extent of 8 ft. wide way. The evidence on record, in my opinion, clearly support the findings recorded by both the courts. No substantial question of law is either raised or involved in the appeal. The second appeal is, accordingly, dismissed. Consequently, the civil application is also disposed of.

(D.B.BHOSALE, J.)